

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, Judge

CACR06-64

FEBRUARY 7, 2007

TERRY DAVIE

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR04-1213]

HON. CHRIS PIAZZA, JUDGE

V.

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Terry Davie was charged with one count of rape and was tried before a jury in the Pulaski County Circuit Court on October 5, 2005. He was convicted of the charge and was sentenced to thirteen years' imprisonment in the Arkansas Department of Correction. He now appeals, contending that the circuit court erred in ruling that the State established a proper chain of custody for smear slides that were taken from the victim. We affirm the conviction.

We do not reverse a trial court's ruling on the admissibility of evidence under the chain-of-custody rule absent a showing that the court clearly abused its discretion. *Kincannon v. State*, 85 Ark. App. 297, 151 S.W.3d 8 (2004). The purpose of establishing a chain of custody is to prevent the introduction of evidence that has been tampered with or is

not authentic. *Crisco v. State*, 328 Ark. 388, 943 S.W.2d 582 (1997). Minor uncertainties in the proof of chain of custody are matters to be argued by counsel and weighed by the jury, but they do not render the evidence inadmissible as a matter of law. *Id.*

In addition, it is not necessary that every possibility of tampering be eliminated; it is only necessary that the trial court, in its discretion, be satisfied that the evidence presented is genuine and, in reasonable probability, has not been tampered with. *Garner v. State*, 355 Ark. 82, 131 S.W.3d 734 (2003). The proof of the chain of custody for interchangeable items like drugs or blood needs to be more conclusive than items of evidence that are subject to positive identification. *Crisco, supra*; *Lee v. State*, 326 Ark. 229, 931 S.W.2d 433 (1996).

Davie notes that an important part of the evidence presented against him was testimony by the State's expert witness Dr. Scott Sherrill, a forensic biologist at the Arkansas State Crime Laboratory. Dr. Sherrill testified that he identified semen on a rectal smear slide in the rape kit that was provided to him for testing in this case.

Davie argues on appeal, as he did below, that the State failed to show how the slide that was provided to Dr. Sherrill came into existence. He complains that the testimony of Dr. Charlotte Hobbs, the attending physician at the time the rape kit was prepared, centered around "swabs that were taken when the victim was examined" rather than the slide identified by Dr. Sherrill. Davie maintains that no evidence was presented as to whether a sample was put on the slide, who prepared the slide, or what procedure was used to prepare it. We find no merit in his argument.

Gretchan Willaby, an employee at Arkansas Children's Hospital, testified that she was in the room with the victim and the attending physician "when the rape kit was performed." Willaby stated that she stayed in the room until all the evidence was collected and that she sealed the evidence into the kit. She identified the rape kit that was introduced into evidence as the one that came from the victim. She stated that the kit was in the same or substantially the same condition as when it had been sealed, and she identified a small envelop labeled "rectal swabs and smear" as a part of the kit. In light of this testimony, we hold that the trial court did not abuse its discretion by admitting the challenged evidence.

Affirmed.

GLADWIN and BAKER, JJ., agree.